1992

Chevron U.S.A., INC v. Utah State Tax Commission; Davis County; and Salt Lake County : Petition for Rehearing

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

* * * * * * *

CHEVRON U.S.A., INC. Petitioner and Appellant, v. UTAH STATE TAX COMMISSION; DAVIS COUNTY; AND SALT LAKE COUNTY, Respondents.	)	CASE No. 92-0546-CA PRIORITY CATEGORY 15

ON PETITION FOR REVIEW FOR FINAL DECISION OF
THE UTAH STATE TAX COMMISSION

* * * * * * *

PETITION FOR REHEARING

VAN COTT, BAGLEY, CORNWALL & McCARTHY
LEONARD J. LEWIS (#1947)
JOHN W. ANDREWS (#4724)
ATTORNEYS FOR APPELLANT
50 South Main, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145
Telephone: (801) 532-3333

JAN GRAHAM (#1231)
Attorney General
BRIAN L. TARBET (#3191)
Assistant Attorney General
State of Utah
ATTORNEYS FOR RESPONDENT
Utah State Tax Commission
36 S. State Street, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 533-3200

IN THE UTAH COURT OF APPEALS

* * * * * * *

CHEVRON U.S.A., INC. Petitioner and Appellant, v. UTAH STATE TAX COMMISSION; DAVIS COUNTY; AND SALT LAKE COUNTY, Respondents.	)	CASE No. 92-0546-CA PRIORITY CATEGORY 15

ON PETITION FOR REVIEW FOR FINAL DECISION OF
THE UTAH STATE TAX COMMISSION

* * * * * * *

PETITION FOR REHEARING

VAN COTT, BAGLEY, CORNWALL & McCARTHY
LEONARD J. LEWIS (#1947)
JOHN W. ANDREWS (#4724)
ATTORNEYS FOR APPELLANT
50 South Main, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145
Telephone: (801) 532-3333

JAN GRAHAM (#1231)
Attorney General
BRIAN L. TARBET (#3191)
Assistant Attorney General
State of Utah
ATTORNEYS FOR RESPONDENT
Utah State Tax Commission
36 S. State Street, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 533-3200

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

RULES:

I. PETITION FOR REHEARING

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, Respondent, Utah State Tax Commission, respectfully petitions the Utah Court of Appeals for rehearing with respect to the Court's decision, dated January 29, 1993, in the above referenced matter.

II. BACKGROUND

Petitioner and Appellant, Chevron U.S.A. Inc. ("Chevron") appealed a decision of the Utah State Tax Commission centrally assessing Chevron's refinery for 1989 property taxes pursuant to Utah Code Ann. § 59-2-201 (1987) (amended). Chevron contended that the Tax Commission misinterpreted language in § 59-2-201 permitting central assessment of "property and surface improvements appurtenant to mines", to include Chevron's Salt Lake City refinery. Chevron also contends that the Tax Commission misinterpreted Utah Code Ann. § 59-2-201(1)(a) to permit central assessment of its refinery, where the refinery operates as a unit across county lines. Finally, Chevron contended that the Tax Commission unconstitutionally failed to grant Chevron a 20% reduction unavailable to locally assessed properties pursuant to Utah Code Ann. § 59-2-304 (Supp. 1989)

(repealed). This court reversed the Tax Commission's jurisdictional determination.

The Tax Commission petitions the Court for rehearing solely with respect to the Court's reversal of the Commission's decision that Chevron's refinery should be centrally assessed, pursuant to the provisions of § 59-2-201(1)(a).

Specifically, the Tax Commission found below, in Finding of Fact 3, that the Petitioner operates an oil refinery facility located in both Salt Lake and Davis counties. Also, in its Conclusions of Law, the Tax Commission found that the Chevron refinery should be assessed by the Commission because it operated as a unit across county lines, and because the values must be apportioned among more than one county.

The Commission further determined in its Decision and Order,

> At the outset, the Commission finds that the Petitioner's refinery is properly centrally assessed on the grounds that it operates as a unit across county lines as mandated by Utah Code Ann. § 59-2-201(1)(a). The facts are not in dispute that a portion, albeit a small portion, of the refinery crosses into Davis County from Salt Lake County. Given that fact, and the fact that § 59-2-201(1)(a) makes no distinction regarding the degree to which a property crosses a county line, the conditions for central assessment are clearly met.

Decision and Order pp. 3-4.

This Court, by finding that the jurisdictional grounds for central assessment were not met, did not reach the constitutional question. The Tax Commission is seeking a review of this Court's decision only with reference to assessment jurisdiction of Chevron's refinery as the record clearly supports the Commission's finding that the property crosses county lines, and that its value is apportioned among two or more counties.

III. ARGUMENT

A. Evidentiary Basis

The Court should have affirmed the Commission's decision that the Chevron refinery should be centrally assessed in accordance with § 59-2-201(1)(a). In its decision, this Court found as follows:

> Chevron correctly complains that the Division did not indicate in its initial determination that the refinery was being centrally assessed under sub-section (a). Nor did it raise the applicability of sub-section (a) in it's briefs or arguments before the Commission. Consequently, Chevron was not aware of the Commission's intent to apply sub-section (a) until it's ruling appeared in the final decision. Chevron, therefore did not have any opportunity before the Commission to present evidence regarding sub-section (a), or to argue its proper interpretation.

Chevron U.S.A., Inc.; and Amoco Oil Company, v. Utah State Tax Commission; Davis County; and Salt Lake County, Case No. 920546-CA, Slip Opinion January 29, 1993.

The Court stated that the Commission had raised this issue sua sponte and quoted two decisions to support its determination. The Court said "only passing reference was made to the refinery's location by Chevron's property tax representative, Chris Chambers, in response to a question by Chevron's legal counsel during the formal hearing." The Court then quoted a colloquy between Chevron's counsel and Mr. Chambers, wherein Chambers admitted that the property was located in Davis and Salt Lake counties. Chevron Transcript at pp. 8-9. This Court stated that this was the full extent of evidence relating to the location of the refinery and the manner in which it crossed county lines.

It is worth noting that Chevron did not contest the Commission's factual finding as to the cross county line operation as it was well aware that the record was clear that the refinery was located in two counties. Chevron challenged only the Commission's interpretation of § 59-2-201. It is clear from the briefs in that Chevron performed no marshalling of the facts which would support the Commission's position. It did not do so, because the Tax Commission's factual finding was unchallenged.

This Court's misunderstanding of the facts ignores the testimony of John Stewart, the Natural Resource Manager for the Property Tax Division, as well as counsels' closing arguments.

It should be noted that the testimony of Mr. Stewart below was to be considered for both the Chevron and Amoco cases. Amoco Transcript at p. 3 and p. 59.

This Court may have been unaware that the testimony of Mr. Stewart as to Chevron and the closing arguments of counsel as to both Chevron and Amoco were contained in the Amoco transcript. Amoco Transcript p. 3, lines 11-20 reads as follows:

> **THE COURT:** Back on the record of Chevron U.S.A. in case No. 89-0826. In speaking with the parties during the recess it is my understanding, correct me if I am wrong, the Chevron case, and the Amoco case will not consolidated, and a separate hearing will be heard for each case. At this point, Mr. Tarbet, we were about to have you put on Mr. Stewart and to allow him to testify at the end of the Amoco case; is that correct?
> **MR. TARBET:** That is correct. Mr. Stewart's testimony will be responsive to both cases, and counsel and I have agreed that John can follow the presentation of the Amoco case.
> **MR. LEWIS:** That's correct, and we will also propose that there be one argument at the end of the Amoco case instead of two arguments.
> **THE COURT:** One set of closing remarks; is that correct?
> **MR. LEWIS:** Right.

Amoco Transcript p. 59, lines 15-21 reads as follows:

> **MR. TARBET:** I would like to call John Stewart to address both of the hearings.
> **THE COURT:** The record should reflect that John Stewart is being called and also his testimony will be considered for the prior case, the Chevron case, as well as the Amoco case.
> **MR. LEWIS:** That is agreeable. I would like to move the admission of Exhibit 3, 4, and 5.

In response to a question posed to Mr. Stewart by counsel for the Property Tax Division, he stated that the property was indeed located in two counties and should be subject to assessment under § 59-2-201(1). Amoco Transcript p. 69, line 3 to p. 70, line 20 reads as follows:

> **MR. TARBET:** One final question, in review of 59-2-201, do you feel that both of these petitioners should be subject to central assessment?
> **MR. STEWART:** Yes.
> **MR. TARBET:** Why is that?
> **MR. STEWART:** I feel there are two parts, they were primarily processing their own material, and according to the statute there they should be locally assessed for that.
> **MR. TARBET:** I'm going to ask you a question about 59-2-201(1)(a) which pertains to only one of these petitioners, that being Chevron, The code states that all property which operates as a unit across the county line, again, this is defining who is subject to central assessment. All property which operates as a unit across the county line, the values must be portioned among more than one county or state; do we have that situation in the Chevron context?
> **MR. STEWART:** Yes.
> **MR. TARBET:** Why is that?
> **MR. STEWART:** They border Salt Lake County and Davis County lines.
> **MR. TARBET:** What do you mean by border? Where does that refinery sit?
> **MR. STEWART:** The refinery sits on top of the county line between Salt Lake and Davis.
> **MR. TARBET:** So, it would be your testimony that Chevron Refinery would be subject to central assessment under sub paragraph A, or sub paragraph D of 59-2-201(1)?
> **MR. STEWART:** Yes.

Furthermore, after Mr. Stewart had been questioned by both counsel for the Property Tax Division and Chevron, a question was posed by Mr. Paul F. Iwasaki, the Administrative Law Judge conducting the hearing. In response to the Court's question, it was again affirmed that the refinery was located in both Salt Lake and Davis County and thus squarely within the embrace of subsection 59-2-201(1). Amoco Transcript p.103, lines 4-18 reads as follows:

> **THE COURT:** Mr. Stewart, with regards to your testimony, you testified that you thought that the Chevron Refinery, and the previous case would come under, subsection 59-2-201, that would be with the county line; is that correct?
> **MR. STEWART:** Yes, that would be a second test to see if it could be state assessed.
> **THE COURT:** Does Chevron Refinery go across the county line?
> **MR. STEWART:** The property borders right on the county line.
> **THE COURT:** And was it assessed prior to 1989 by Salt Lake and another county?
> **MR. STEWART:** Salt Lake and Davis assessed the property, if that's my understanding.

Furthermore, this Court stated that the jurisdictional question of multiple county operations was not argued below. This point was argued to the Commission both by counsel for the Property Tax Division in his final argument to the Commission and

by counsel for Chevron. Amoco Transcript p. 116, lines 5-12 reads as follows:

> **COUNSEL FOR PROPERTY TAX DIVISION:** Let me deal with Chevron. The whole issue here comes down to any or some of the provisions apply to Chevron to the extent that it should be centrally assessed. We have pointed out here today on testimony received that in case of Chevron this is a taxpayer, which does business in two counties, operates across state lines. It seems clear that it comes within the embrace sub section 1(a) of 59-2-201.

Amoco Transcript p. 126, line 9 to p. 127, line 6 reads as follows:

> **COUNSEL FOR CHEVRON:** Finally, with regard to the issue of the taxpayer Chevron, doing business in two counties. That statute, that portion in the statute which by the way that issue is raised for the very first time today, they never heard of it before. The reason it hasn't been raised before is because it is not applicable. That section 1(a) of this statute says, all property which operates as a unit across county lines if the values must be portioned among more than one county or state, this portion of the statute is dealing generally with railroad properties and the like, that are truly operated as a unit and cannot be individually valued by county. You don't value ten miles of railroad track in Juab county, and then ten miles or 20 miles in Millard County. The way you look at it is as a whole.
>
> That isn't the case with the Chevron Refinery. You have one very small portion, I believe it's actually part of the intake pipeline that is in Salt Lake County. All the rest is in Davis County. The reason that Chevron has not been centrally assessed under

> section 1(a) which has been in existence for many years, is because the Tax Commission has realized that that is not applicable to the Chevron situation. Otherwise Chevron would have been centrally assessed for the past many years. Thank you.

The fact that the Chevron property was located in both Davis and Salt Lake Counties and operated across county lines, is abundantly clear from two witness, questioned by three interrogators during the hearing before the Tax Commission.

To suggest that this point was not argued before the Tax Commission and thus could not be raised by the Tax Commission on appeal ignores the record.

B. CASE LAW

Further, the cases quoted by the Court to support its position are inapposite. In Combe v. Warren's Family Drive-Inns, Inc., 680 P.2d 733 (Utah 1984), the Supreme Court cited with approval a case that held that findings which are at variance with the claims of both parties are not favored and are carefully scrutinized on review. West v. West, 16 Utah 2d 411, 403 P.2d 22 (1965).

In Combe, the Supreme Court further quoted Utah R. Civ. P. 54(c)(1) which permits relief on grounds not pleaded, arguing that the rule does not go so far as to authorize the granting of relief on issues neither raised nor tried. Cornia v. Cornia, 546

P.2d 890 (Utah 1976). The Court then argued that the trial court fashioned its finding from whole cloth.

In this case, it is clear that the jurisdictional point was exhaustively established below that the refinery operated in both Salt Lake and Davis Counties. Two witnesses offered testimony, the Tax Commission made a specific finding, and there was a specific conclusion of law addressing this point. The majority of the hearing below involved the jurisdictional question.

The fact is that Mr. Chamber's testimony alerted the Property Tax Division to an additional basis for jurisdiction. This point was then aggressively argued before the Tax Commission and was it clearly within the Tax Commission's purview to issue a ruling. To hold otherwise would be an distortion of judicial economy and a waste of resources.

Girard v. Appleby, 660 P.2d 245 (Utah 1983) cited by this Court is likewise not on point. In the Girard case it was argued:

> In the instant case, we are not apprised of the reason Girard saw fit to rest her case without presenting evidence in support of her claim for attorneys fees. However, even if it can be assumed that it was the result of oversight, the interests of justice are not enhanced when the court exceeds it's role as arbiter by reaching out and deciding an issue

> that would otherwise be dead, it not having been litigated at the time of trial.

Id. at 247.

In both Warren and Girard, there was a sua sponte ruling by the court. In present case, there was both evidence and argument at the plenary hearing to support the Tax Commission's Finding and Conclusions. Neither case cited by this Court is relevant.

It should be noted that the burden of proof in hearings before the Tax Commission rests with the Petitioner. Utah State Tax Commission Rule R861-1-7A.G states:

> G. Burden of Proof. The petitioning party shall have the burden of proof to establish that his petition should be granted.

It is clear from the record that the evidence established that the refinery was located in both Salt Lake and Davis Counties. Counsel for Chevron, in his closing argument to the Commission, noted that the property in Salt Lake County consisted of intake pipelines. Testimony established that the value of the refinery would be apportioned to both counties. Chevron offered no evidence to detract from this jurisdictional basis, and in fact offered much of the evidence in support of such a jurisdictional finding. The record supports both the Commission's Finding and Conclusions.

CONCLUSION

Based on the foregoing, the Tax Commission respectfully requests that the Court grant its Petition for Rehearing. The Tax Commission seeks to clearly establish that the Chevron refinery was properly centrally assessed and that the additional constitutional issue needs to be dealt with by this Court. Should the Court desire oral argument or additional written briefs, the Tax Commission would be pleased to provide the same.

CERTIFICATION

The undersigned certifies that the Petition for Rehearing is presented in good faith and not for delay.

DATED this 10th day of February, 1993.

BRIAN L. TARBET
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 10TH day of February, 1993, I caused four true and correct copies of the foregoing **PETITION FOR REHEARING** to be mailed, first class, postage prepaid, to the following:

JOHN W. ANDREWS
VAN COTT, BAGLEY, CORNWALL & McCARTHY
50 South Main, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145